

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
)
Jared A. Bruegman) File Number: EB-FIELDSCR-12-00005740
) NAL/Acct. No.: 201332560003
Bolivar, MO) FRN: 0003872686
)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 25, 2013

Released: February 25, 2013

By the District Director, Kansas City Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Jared A. Bruegman apparently willfully violated Section 301 of the Communications Act of 1934, as amended (Act),¹ by operating an unlicensed radio transmitter on the frequency 14.312 MHz in Bolivar, Missouri. We conclude that Mr. Bruegman is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On December 18, 2012, in response to a complaint of interference to amateur radio communications, agents from the Enforcement Bureau's Kansas City Office (Kansas City Office) heard a male voice transmitting on the frequency 14.312 MHz. They used direction-finding techniques to locate the source of radio frequency transmissions on the frequency 14.312 MHz to a transmitting antenna mounted on a pole next to a residence in Bolivar, Missouri. The agents determined that the signals on 14.312 MHz exceeded the limits for operation under Part 15 of the Commission's rules (Rules),² and therefore required a license. The Commission's records showed that no authorization was issued to Mr. Bruegman for operation of a radio transmitter on 14.312 MHz at or near this location.

3. Immediately after locating the source of the signals on 14.312 MHz, the agents inspected the unlicensed radio transmitter, which was located in a bedroom in the Bolivar residence. Mr. Bruegman was the only person present in the bedroom and the only male in the residence during the inspection. Mr. Bruegman admitted to the agents that he owned the radio transmitter. The agents observed that the transmitter was turned on and tuned to 14.311 MHz.³ Mr. Bruegman told the agents that he had no current Commission licenses, but that he previously held an Amateur Radio license, call sign KC0IQN.⁴ Mr.

¹ 47 U.S.C. § 301.

² Part 15 of the Rules sets out the conditions and technical requirements under which certain radio transmission devices may be used without a license. In relevant part, Section 15.209 of the Rules provides that non-licensed operation in the 1.705-30 MHz band is permitted only if the field strength of the transmission does not exceed 30 µV/m at thirty meters. 47 C.F.R. § 15.209.

³ Mr. Bruegman's transmitter may have been calibrated differently than the agents' receiver, which would explain the differential in frequency. The differential is considered negligible and does not affect our analysis.

⁴ Commission records show that Mr. Bruegman's Technician Class Amateur Radio license expired August 17, 2010. See Universal Licensing System, Call Sign KC0IQN. Mr. Bruegman's expired license did not authorize operations on 14.312 MHz. See 47 C.F.R. § 97.301(e) (authorized frequency bands for operator of Technician Class license).

Bruegman told the agents he would remove the microphone from his transmitter and only use it as a receiver.

III. DISCUSSION

4. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁵ Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁶ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁷ and the Commission has so interpreted the term in the Section 503(b) context.⁸ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁹ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁰

A. Unlicensed Station Operation

5. The evidence in this case is sufficient to establish that Mr. Bruegman violated Section 301 of the Act. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States, except under and in accordance with the Act and with a license granted under the provisions of the Act.¹¹ The record shows that on December 18, 2012, agents from the Kansas City Office determined that an unlicensed station on the frequency 14.312 MHz operated from a room in a residence in Bolivar, Missouri. A review of the Commission’s records revealed that no license or authorization was issued to Mr. Bruegman to operate a radio station on 14.312 MHz from this location. Mr. Bruegman admitted owning the radio transmitting equipment and was the sole person located in the room when the transmitting equipment was powered on and tuned to 14.311MHz. The difference in frequency between the agents’ receiver and Mr. Bruegman’s transmitter is negligible and can be attributed to calibration differences. Because Mr. Bruegman consciously operated the radio transmitter, the apparent violations of the Act were willful. We therefore

⁵ 47 U.S.C. § 503(b).

⁶ 47 U.S.C. § 312(f)(1).

⁷ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[.] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms”).

⁸ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), recons. denied, 7 FCC Rcd 3454 (1992).

⁹ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁰ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

¹¹ 47 U.S.C. § 301.

conclude, based on the evidence before us, that Mr. Bruegman apparently willfully violated Section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

B. Proposed Forfeiture Amount

6. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.¹² In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹³ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Bruegman is apparently liable for a forfeiture in the amount of \$10,000.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314, and 1.80 of the Commission's rules, Jared A. Bruegman is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violation of Section 301 of the Act.¹⁴

8. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Jared A. Bruegman **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Jared A. Bruegman will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁵ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure

¹² *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), recons. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80

¹⁵ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.

- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

10. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁶ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

11. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.¹⁷ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Kansas City Office, 520 N.E. Colbern Rd., 2nd Floor, Lees Summit, Missouri 64086-4711, and include the NAL/Acct. No. referenced in the caption. Jared A. Bruegman also shall e-mail the written response to SCR-Response@fcc.gov.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to Jared A. Bruegman at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Ronald D. Ramage
District Director
Kansas City Office
South Central Region
Enforcement Bureau

¹⁶ See 47 C.F.R. § 1.1914.

¹⁷ 47 C.F.R. §§ 1.16, 1.80(f)(3).